Courts in this country would be bound by Acts of the Imperial Legislature affords no ground for arguing that they are bound by the Executive Orders of the King in Council" (pp. 50–51, 192). As this edition is the earliest book to give these recent citations and these discussions, however short, of the more important recent decisions, it is clearly of at least temporary use both to the student and to the practitioner.

It is perhaps proper to add that the tone of the book is not intended to give offense to Americans. Surely no one was angered by the statement in the first edition, the primer of 1899 (p. 52), that "the lawyer is not concerned with the wild speech of President Grant in 1870: 'he hoped that the time was not far distant when in the natural course of events the European connection with the continent would cease'"; and now that passage is mellowed thus: "with some of the extravagant utterances of President Grant in favor of a cessation of relationships between Europe and America — a consummation impossible of achievement — we are not here concerned" (p. 94). Again, the treatment of *The Trent* episode of 1861 is not unfriendly; and an attractive olive-branch is found in the statement retained from the youthful primer that "Mr. Seward, however, in a long dispatch which illustrates very happily the inconveniences to which a politician exposes himself who gets up his international law for the occasion, maintained that the seizure was in other respects good, and that Messrs. Mason and Slidell were a species of contraband" (p. 405).

E. W.

THE CORPORATION AS A LEGAL ENTITY. By James Treat Carter. Baltimore: M. Curlander. 1919. pp. 234.

This is a study growing out of an essay originally presented as a thesis at the Law School of the University of Maryland, subsequently "broadened to embrace the philosophical and legal aspects of the corporate entity." Part I contains, *inter alia*, chapters on "Theories and Concepts of the Corporation," "The Corporate Entity as Citizen and Person," and "The Extent to which the Courts Disregard the Corporate Entity." Part II is devoted to Maryland laws and decisions.

The work evidences much reading, and largely consists of extracts from decisions and treatises, with running comment.

The main thought of the author is that a corporation is not a fiction but a reality. But he nowhere defines, with satisfying clearness, what he means by a corporation, or what he means by reality. On page 13 he says: "From all these various definitions, it may be said at least that a corporation is an association of individuals acting as a unit, and exercising rights and powers designated by an Act of the State." But at page 223 he says that a one-man corporation introduces "no really new problems into the law of corporations." And in pages 130 to 131 he says that "it seems inevitable that the denial of citizenship to corporations within the meaning of the Comity Clause and the Fourteenth Amendment will be abandoned at some time in the future. . . . It is true that not everything which a state could see fit to call a corporation must be deemed a citizen. There must be the human substratum." Thus three possibilities are opened, — first, a corporation consisting of two or more human beings; second, a corporation consisting of one human being; third, a corporation without "human substratum." Does the author mean that all three sorts of corporations are realities?

The word "corporation" seems to have been usually used at the common law as a term broad enough to include any legal unit not a human being. Such a legal unit was usually predicated upon an association of human beings, but was not necessarily so predicated, — sometimes, for example, it was predicated upon an office.

Assume for the moment that "corporation" is used to designate an association of persons. Is such a corporation a "reality"? Most of us conceive of an association of persons as a unit, — a composite unit but nevertheless a unit. Possibly this conception is a delusion — but it is a wise lawyer who leaves it to the philosophers to argue about that. An association of persons is a unit in popular conception. The unit is real in the sense that it is popularly conceived to exist. If the law recognizes such unit as a legal unit, it simply confirms a popular conception.

Lord Coke said that a corporation "is only in abstracto, and rests only in intendment and consideration of the law." Chief Justice Marshall said that it existed "only in contemplation of law." As applied to corporations predicated upon an association of persons, these pronouncements are plainly wrong. Of course the law creates all legal units, which is merely to say that there are no *legal* units except such as the law itself permits, — a human being is not a legal unit unless the law says he or she is, and equally an association is not a legal unit unless the law says it is. But nevertheless it is not true that the human being exists solely in legal contemplation, and it is not true that the association exists solely in legal contemplation.

Consequently if the term "corporation" is used as the equivalent of "an association of persons recognized as a legal unit" most of the comments on reality made by Mr. Carter are sound. And most corporations are of that kind. But the troublesome fact remains that there are corporations which are not of that kind, and it is a serious defect in Mr. Carter's study that he has given no adequate attention to such corporations. If a legislature passed an act, to be effective upon its passage, creating the corporation (its stock to be thereafter issued to persons who might subscribe therefor with a designated official), it is submitted that a legal unit would forthwith exist. The words of Coke and Marshall would be true of such a corporation. It would be a mere legal fiction. And there are other intermediate cases which must not be ignored, — thus all of the stock of a corporation might be owned by a single stockholder, or the legislature might authorize a single person to incorporate, or might predicate a legal unit upon an office, or a business, or the estate of a deceased person.

Mr. Carter is not content with the doctrine that corporations are to be created only by the state. There is no reason in the nature of things why courts, on their own initiative, should not create legal units which are not human beings. But for centuries it has been a fundamental legal principle that it was the exclusive prerogative of the sovereign (with us, the legislatures) to create legal units which were not human beings. For the courts to recognize an association as a legal unit, in the absence of legislative sanction, is in violation of this principle. Whether the courts may properly treat as obsolete this long-established principle is questionable. But this is a question as to the division of power between legislatures and courts, and has nothing to do with the question of the reality of corporations.

In dealing with an association of persons, one may conceivably regard the association as a reality (Mr. Carter's view), or as a mere abstraction, conceding reality only to the persons (Lord Coke's view). But it is inconsistent for the same person to urge (1) that an association of persons should be regarded as a unit, on the ground that this is the real fact; and also to urge (2) that the corporate entity should be disregarded, on the ground that thus we get down to the real facts. If the association is a real unit, then to disregard the entity is not to sweep away a fiction (a phrase connoting the righteous act of striking down a sham), but is to ignore or override the truth. If Mr. Carter is thoroughly convinced of the reality of corporations, he ought to be vastly more troubled than he apparently is by the decisions which disregard the corporate entity. His chapter on this topic is a disappointment.

It may be added that, even if a corporation is only a legal fiction, nevertheless that fiction is of legislative origin and should be respected by the courts. The first authority that a court may, when it sees fit, disregard the fiction was the Deveaux case, and it would be hard to-day to find champions for the reasoning of the court in that case. The doctrine is destructive of reasonable certainty in corporation law, for it amounts to saying that the courts will respect or disregard the corporate entity from case to case as they think fit. Nor is such a doctrine necessary in order that justice be done; if persons in control of corporations use their power of control for an improper purpose, or if a corporation confederates with other legal units to accomplish an improper purpose, the courts can easily give appropriate relief without disregarding the corporate entity.

EDWARD H. WARREN.

A HISTORY OF THE BANKRUPTCY LAW. By F. Regis Noel. Washington, D. C.: Charles H. Potter and Company. 1919. pp. iv., 209.

There is room for a good history of bankruptcy legislation, and a knowledge of the subject is not without practical utility. Especially was this true during the early years of the present federal bankruptcy statute, when there was little precedent for the guidance of the courts except what might be found under earlier laws. How little the history of similar statutes was in the minds of the judges may be seen, for instance, from the reasoning in the dissenting opinion in *Wilson* v. *Nelson*, 183 U. S. 191, 211, 22 Sup. Ct. Rep. 74. In that case the passive suffering or permitting a creditor to obtain a preference by legal proceedings was held to be an act of bankruptcy. Four judges dissented, approving the decision below of *In re Nelson*, 98 Fed. Rep. 76, and *Duncan* v. *Landis*, 106 Fed. 839 (C. C. A.), one of the grounds being that passively permitting a preference could not be an *act* of bankruptcy, since an act must necessarily be active. If the dissenting judges and the lower courts taking the same view, had realized that every bankruptcy statute in England and the United States for centuries had made certain kinds of passive indications of insolvency a ground for bankruptcy proceedings, and had classified these passive causes as acts of bankruptcy, the futility of their reasoning on this point would have been apparent.

It is unfortunate that Mr. Noel's book cannot be commended. In his introduction he assumes that the purpose of bankruptcy legislation has been the relief of insolvent debtors, and this error vitiates many of his conclusions. He does, indeed, state the provisions of the early statutes, which show that their purpose was partly to give the creditors of an insolvent an added remedy, and partly to punish the debtor; but he fails to realize the persistence of this view. He says of the provision for a discharge, which first found a place in the Statute of Anne: "At that time debt was not looked upon as a crime, as Englishmen of an earlier and quite frequently of the present age regard it, and for the first time the rights of the debtor as well as those of the creditor were considered in formulating a law," and adds: "Lord Loughborough sometime earlier detected this tendency and in Sill *versus* Worswick, 1 H. Bl. 665, established a departure from the criminal view, remarking that, 'the law, upon the act of bankruptcy being committed, vests his property upon a just consideration, and not as a forfeiture, not as a supposition of crime committed, not as a penalty.'"

If the author had realized the true character of early bankruptcy legislation, he could not have supposed that Lord Loughborough's statement was prior to the Statute of Anne. The full meaning of the facts that voluntary bankruptcy was not allowed in England until the reign of George the Fourth, and that the relief of poor debtors was achieved originally through so-called